

(1944) 06 BOM CK 0014
In the Bombay High Court
Case No : Second Appeal No. 217 of 1942

Sitaram Sadashiv Paradkar

APPELLANT

Vs

Vithal Padhye

RESPONDENT

Date of Decision : 29-06-1944

Acts Referred:

Khoti Settlement Act, 1880 — Section 24

Citation : AIR 1945 Bom 364 : (1945) 47 BOMLR 376

Hon'ble Judges : Macklin, J; Lokur, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Lokur, J,

1. The two suits out of which these appeals arise and two other companion suits were filed by four out of five sharers in the sharakati khoti village Choravne in Ratnagiri District, to recover the difference in the survey rates and the mamul rates for the years 1931-32 to 1936-37 from the knots of the village. A village is called sharakati when Government receives a percentage of the land revenue and in this village Government and the inamdars have each an eight annas share. In 1885 Government introduced survey settlement in the village without the consent of the inamdars. Some of the plaintiffs are the descendants of the original inamdar and the others are alienees. The plaintiffs in these two appeals hold one anna share and three annas share and the plaintiffs in the two suits in respect of which there have been no appeals hold five annas share and two annas share respectively. The remaining five annas share is held by Vinayak Govind Dixit Athalye whose name is entered in the alienation register as the registered holder of the inam village. Out of the nine defendants defendant No. 9 owns a share of four annas and 20 rcsas in the entire khotki of the village and the other defendants are the mortgagees of the khotki with possession. The plaintiffs in each of the four suits claim that they are entitled to recover from the khots mamul rates. During the years in suit 1931-32 to 1936-37 the village was

under attachment by Government and the village officers recovered land revenue (jama) from the khots according to the survey rates settled at the survey of 1885. Half the amount thus recovered was paid to the registered inamdar Vinayak Govind and he distributed it among his co-sharers according to their shares. The plaintiffs, however, claim that they are entitled to the mamul rates which are more than the survey rates. The registered holder has apparently not joined them in this claim. The plaintiffs, therefore, brought this suit to recover from the khots the difference between the mamul rates and the survey rates already paid to them through the registered holder. Both the Courts below have dismissed all the four suits on two grounds, viz. that the suits as framed are not maintainable as the plaintiffs should have sued the registered inamdar who was responsible to make recoveries on their behalf and distribute the amount among them and that the survey having been validly introduced in the village the plaintiffs are not entitled to recover anything more than the survey rates which superseded the mamul rates.

2. In Narhar Sonajee Jahagirdar Vs. Trimbak Shridhar Jahagirdar, it is laid down, that where the name of a co-sharer of an inam village is not registered as a sharer in village form No. 3 and he is not recognised as a managing inamdar, he cannot bring a suit in a civil Court to recover his own share direct from a khatedar of the village. He must sue the managing inamdar for an account and recover his share in the land revenue which may have been recovered or which may have been negligently omitted to be recovered by the managing inamdar. The managing inamdar is liable to account to his co-sharers not only for the land revenue recovered by him through the village officers, but also by way of damages for whatever he has failed to recover owing to negligence or laches or through his own default, The correctness of that ruling is not disputed, but. it is urged that there is no managing inamdar for this village and in village form No. 3 as given in Anderson's Manual of Revenue Accounts there is no column for the entry of the name of the registered inamdar. But as pointed out in para. 171(2) at p. 142 of Joglekar's Alienation Manual, in every inam village the nearest heir or his assignee according to the tenure in each case is entered in Government account as the inamdar who has the sole right to manage the village, i.e. to recover revenue etc. And in this particular case Exhibit 59 shows that the name of Vinayak Govind Dixit Athalye was entered in col. 4 of the alienation register as the registered holder of the inam. Both the Courts below, therefore, held that he was the managing inamdar and as such was responsible to recover the inam dues and distribute them among his co-sharers. As he was the sole registered holder, Government recovered the survey rates during the period of attachment of the village, kept half the dues and made over the remaining half to him. It is admitted that he distributed that amount among his co-sharers, but did not take any steps to recover the difference between the mamul rates and the survey rates. If he was negligent in doing so, the proper remedy for the co-sharers was to sue him as held in the case cited above. But according to the custom prevailing in! this village the registered holder was not the managing inamdar ;

on the other hand on several occasions since before 1388 individual co-sharers filed suits against the khots and recovered their individual shares in the mamul rates (Exhibits 50 to 56 and 58).

The learned District Judge has observed that in those suits no objection was taken by the khots to the maintainability of the suit on the ground that they were not liable to be sued and that the suits should have been filed against the managing inamdar. But the fact remains that there was a tacit consent on the part of the khots to allow individual co-sharers in the inara to recover from them their respective shares in the mamul judi. Ordinarily where there are several co-sharers and none of them is a recognised managing co-sharer, all the co-sharers should bring a suit to recover the whole of the amount due to them. This principle was considered in *Pmtmda Nath Roy v. Ramctni Krnita Roy* I.L.R (1907) Cal. 331 : 10 Bom. L.R. 66 . Although that was a case under the Bengal Tenancy Act, their Lordships observed that it was a general rule? a rule not derived from the Bengal Tenancy Act, but from quite another branch of law, namely, the general principles of legal procedure? that a sharer, whose co-sharers refused to join him as plaintiffs, could bring them into the suit as defendants, and sue for the whole rent of the tenure. It was further observed that where by express or implied agreement between the zemindars and the putnidars, the shares in the putni rent of the several zemindars were to be paid, and so far as they were paid at all, were, in fact, paid separately, each zemindar was entitled to sue separately for his respective share. In that case the evidence of such an implied agreement consisted of certain decrees showing that the shares of the rent had been from time to time separately recovered and their Lordships said that the agreement thus implied by the conduct of the parties might (establish the right to sue separately for the shares of rent receivable by the separate share-holders. Similarly in the present case also an understanding between the co-sharers in the inam and the khots might be inferred from the various decrees individually obtained by them for their respective shares in the rent. That also shows that although there was a registered inamdar, yet he was not recognised as the manager on behalf of all, since he allowed each sharer to bring separate suits to recover his share in the dues without any objection on the part of the khots. In view of this practice we think that the suits as framed must be held to be maintainable.

3. The next question is whether the plaintiffs are entitled to recover from the khots mamul rates or only survey rates. Choravne is a sharakati inami khoti village. In such a village we are concerned with four parties, Government, the inamdar, the lihot and the privileged occupants, and it is necessary to understand the mutual relations between them. It must be presumed that the village was a khoti village and Government granted in inam half its rights in the village to the inamdar. Since then the inamdar stands in the position of Government in respect of the village to the extent of one half, subject to the liability of paying judi (if any) to Government. (See Supplement to Anderson's Manual of Revenue Accounts, 1942, p. 16, paragraph 57). "Sharakati" means a partnership, and in

this sharakati village Government and the inamdar may be said to be equal partners, possessing cognate rights over the khot and the occupants. u/s 4 of the Khoti Settlement Act, 1880, a khot is entitled to continue to hold his village conditionally on the payment of the amounts due on account of the jama of the village. Section 24 of the Act provides :

The jama payable to Government by the Khot shall be the aggregate of the survey assessments of the lands of the village minus such percentage of deduction, if any, as Government may in each, case direct.

The amount of the said jama shall be from time to time fixed for the same period for which the survey assessments are fixed.

4. Thus all that Government and the inamdar can recover from the khot is the jama payable under this section. The khot, in his turn, recovers his own dues from the privileged occupants as laid down in Section 33, survey assessment from dharekaris. Survey assessment plus some additional grain or money according to the schedule from quasi dharekaris, and rent according to the survey record from permanent tenants. In a khoti inam village Government and the inamdar have hardly any direct connection with the occupants of the lands as they have to look to the khot for their jama. In Section 3, Clause (4), the word "jama" is defined as land-revenue payable by a khot to Government, and prior to the introduction of the survey settlement, this jama had to be paid according to mamul rates. When the District of Ratnagiri came under the Peshwas, Nana Fadnavis ordered a survey of the Konkan in 1770, with a view to the settlement of the revenue. That survey was completed by the Mamlatdar Parshurampant Patwardhan in 1787-88. Hence in *Gangadhar Hari Karkare v. Morbhat Purohit* I.L.R (1893) Bom. 525 Sargent C. J. described the mamul (ancient) rates as those fixed by Parashurampant's survey. The question that arose in that case was the same as that in this case, whether the inamdar of a khoti village was entitled to recover the rent fixed by the Parashuratnpant survey in 1787-88 or the cash assessment fixed by the British Government in 1886-87. It was held that he was entitled to recover the mamul rates, as, according to the interpretation then placed upon Section 216 of the Land Revenue Code the introduction of the survey settlement did not affect the inamdar's rights as he had not given his consent to it. That interpretation of Section 216 was accepted by a Full Bench of this Court in *Sitaram Sakharam v. Laxman Vinayak* I.L.R (1921) Bom. 1260 :23 Bom. L.R. 749. Thereafter s, 216 was amended by Bombay Act XV of 1929 so as to empower Government to introduce survey settlement in an alienated village if the holder or holders representing in the aggregate not less than one half of the total interests in the village in respect of its alienated revenue gave their consent to it. Sub-section (2) of that section further provides that if any share of the village is unalienated the prescribed proportion of one half shall be reckoned as if the village were wholly alienated, Government being considered as the holder in respect of the unalienated share. Hence, in a sharakati inam village where Government has alienated only a half of

the village to the inamdar and the village is not divided between them by metes and bounds, the consent of Government will be enough for the introduction of survey settlement in that village. Sub-section (4) of Section 216 declares all survey settlements already introduced in alienated villages to be valid as if they had been introduced in accordance with the provisions of the amended section. Hence though the survey settlements introduced in sharakati inam villages without the inamdars' consent were not binding on the inamdars when the cases of Gangadhar v. Morbhat and Sitaram v. Laxman were decided, they have become valid after the amendment of Section 216 in 1929 and are binding on the inamdars.

5. Section 217 of the Land Revenue Code provides :

When a survey settlement has been introduced under the provisions of the last section or of any law for the time being in force, into an alienated village, the holders of all lands to which such settlement extends shall have the same rights and be affected by the same responsibilities in respect of the lands in their occupation as holders of land in unalienated villages have, or are affected by, under the provisions of this Act, and all the provisions of this Act relating to holders of land in unalienated villages shall be applicable, so far as may be, to them.

6. It is urged by Mr. Valavalkar for the appellants that khots are not holders of lands in the village and cannot, therefore, get the benefit of the survey settlement under this section. He relies upon Secretary of State v. Wasudeo I.L.R (1907) Bom. 456 : 9 Bom. L.R. 719, where (at p. 459) Chandavarkar J. has described khots as "mere farmers of the land revenue having only a hereditary right of farming the village." That is only one part of the description. That case dealt with the claim of the khots to occupy and cultivate lands left dry in the river bed as far as the middle of the bed opposite their khoti village, and that claim was upheld, in spite of the ownership of Government over such lands u/s 37 of the Land Revenue Code. Following the ruling in Tajubai v. Sub-Collector of Kolaba (1866) 3 B.H.C.132, that the khot settles with Government for "assessment of the village as a whole " and that he may let out for cultivation or himself cultivate, without making any additional payment to Government on that account, any waste, or uncultivated land of the village, and that such right must consequently be viewed as the recognised mode of his remuneration for the service rendered, Chandavarkar J. observed (p. 460) :

...there was nothing to prevent Government from appropriating such (alluvial) land to any person and creating private rights derogating from their ownership or right as the State landlord...Such appropriation to the khots of the soil must be held to have been made when they were constituted hereditary farmers of the whole village, with the right to bring into cultivation all waste or uncultivated land in the village

7. This correctly describes the position of the khots. Mr. Valavalkar points out

that in this village the inamdars are the alienees of the soil and not merely of the royal share of the revenue. That makes no difference. This is clear from what Chandavarkar J. has further observed (p. 461) :

Section 37 of the Land Revenue Code (declares that Government are the owners of such lands. So they had been before that section became law, and so they are now. But that is not decisive of the right now claimed by Government so as to deprive the respondent khots of the right acquired by them in virtue of the khotship to cultivate the lands.

8. By the grant of the soil of the village in inam, the inamdars merely stepped into the shoes of Government, and though thereby they acquired all the rights possessed by Government, they cannot deprive the khots of the right acquired by them in virtue of the khotship to cultivate the waste and alluvial lands and to deal with the privileged occupants, subject only to their liability to pay the jama to the inamdar. In *Bhikaji Ramchandra Oke v. Nijamali Khan* I.L.R (1884) Bom. 525 it was held that in the village to which the Khoti Settlement Act, 1880, was extended, the khot enjoyed the position of a superior holder. This is also borne out by the description of the privileged occupants as "inferior holders" in the heading of Part II of the Act. Section 31 shows that as a superior holder, a khot is entitled to file assistance suits for the recovery of rents from privileged occupants under Sections 86 and 87 of the Land Revenue Code. Thus though he may not be in actual possession of his holding, he is a "holder of land" as defined in Section 3(11) of the Code and, therefore, u/s 217, he gets all the advantages and disadvantages resulting from the survey settlement validly introduced in his village u/s 216. Thus u/s 33 of the Khoti Settlement Act he will be thereafter entitled to recover from his dharekaris only the survey assessment as fixed at the survey settlement; and similarly u/s 24 of the Act, he will be liable to pay jama to Government or the inamdar only at the survey rates, and not at mamul rates. This position is accepted by Government, and during the period of attachment, Government recovered jama only at the survey rates and paid half of it to the registered inamdar. The plaintiff's claim to recover anything more must, therefore, fail.

9. It is true that u/s 39 of the Khoti Settlement Act, Section 68 of the Land Revenue Code does not apply to a khoti village ; but that makes no difference since analogous provisions are contained in Sections 4 and 7 of the Khoti Settlement Act.

10. The appeals are, therefore, dismissed with costs.